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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ronald Jacobson  
Serial No.: 09/826,428  
Filing Date: April 2, 2001  
For: MONITORING SYSTEM AND PROCESS FOR THE  
FOOD SERVICE INDUSTRY

Group Art Unit 3623  
Meinecke Diaz, Susanna, Examiner

2800 S.W. Third Avenue  
Miami, Florida 33129  
April 24, 2003

Honorable Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Dear Sir:

**PETITION PURSUANT TO 37 C.F.R. 1.137(f) and 1.137(b)**

The Applicant in the above-identified case hereby petitions the Commissioner under 37 C.F.R. 1.137(f) and 1.137(b) for the withdrawal of any abandonment of the afore-mentioned application.

As more fully described below, the grounds for this Petition are that Applicant filed a corresponding foreign patent application under a multilateral international agreement, namely, the Patent Cooperation Treaty, and due to a clerical error, unintentionally failed to timely file an appropriate Request to Rescind a Previous Non-Publication Request.

The facts and evidence which support this Petition and which show that withdrawal of the holding of abandonment is warranted, are as follows:

1. The present application was filed on April 2, 2001 and assigned Serial No. 09/826,428.

2. A Request and Certification Under 35 U.S.C. 122(b)(2)(B)(i) was filed along with this application on April 2, 2001 and the file jacket of the undersigned's law firm corresponding this matter was noted as such.

3. Subsequently, the Applicant decided that foreign patent protection would be important for the invention recited in the above-noted application and instructions were provided to the undersigned to file a corresponding patent application under the Patent Cooperation Treaty ("PCT").

4. The aforementioned PCT application was filed on April 2, 2002 and assigned Serial No. PCT/US02/10212, and further, included a claim of priority to the above-noted U.S. application. This PCT application became published on October 10, 2002.

5. Due to a clerical error, and perhaps due to the relatively new procedures being established at the time for Requests for Non-Publication and their rescindment, the need to file a Request to Rescind the earlier Request for Non-Publication in this U.S. application within the prescribed 45 day time period was either not noticed or not docketed for action.

6. Upon a review of the above-referenced U.S. case yesterday in response to a first Office Action, it was learned that the Request to Rescind had not been timely filed and this Petition is being presented immediately upon learning same.

7. The undersigned attorneys have not received any kind of Notice of Abandonment from the PTO in connection with this matter but are taking this action immediately in an abundance of caution.

8. In the event that this U.S. application has been abandoned, it is respectfully argued that this case should be re-instated immediately because it was mistakenly abandoned, as evidenced by the attached Declaration in support of the above-noted facts.

9. The appropriate filing fee(s) for this Petition may be charged to the **PTO Deposit Account No. 13-1227** as authorized by the attached document.

10. I Declare under penalty of perjury that the preceding is true and correct.

11. If any questions arise concerning this matter and/or if any further evidence or other items are needed to withdraw any holding of abandonment, the undersigned may be contacted at any time.

Respectfully submitted,

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**APR 28 2003**

**OFFICE OF PETITIONS**

By: \_\_\_\_\_

Jennie S. Malloy  
Reg. No. 37,670

Dated: \_\_\_\_\_

4-24-03